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OFFICE OF PETITIONS

In re Application of :
Negoescu et al. :
Application Number: 10/758177 : DECISION ON PETITION
Filing Date: 01/15/2004 :
Attorney Docket Number: :
OWND002US0 :

This is a decision on the petition filed on April 9, 2009, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on June 27, 2007, for failure to timely file a response to the final Office action mailed on March 26, 2007, which set a three (3) month shortened statutory period

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on October 18, 2007. On December 22, 2008, a petition to withdraw the holding of abandonment was filed. On February 13, 2009, the petition was dismissed.

On April 9, 2009, the subject petition to revive the application was filed.

The Notice of Appeal filed December 22, 2008, has been entered and made of record. Accordingly, the two (2)-month period for filing the Appeal Brief, accompanied by the fee required by law, runs from the date of this decision.

The duplicate Notice of Appeal fee filed with the subject petition is unnecessary and will be credited to counsel's deposit account.²

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.³ The two (2)-month extension request filed on December 22, 2008, was submitted more than three (3) months after the end of the period for reply to the final Office action mailed on March 26, 2007, and therefore is unnecessary. The extension of time fee paid on December 22, 2008, will be refunded to counsel.

This application is being referred to Technology Center Art Unit 2837 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

² The Notice of Appeal fee was originally paid on December 22, 2008.

³ See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).